

STATE OF MICHIGAN
DEPARTMENT OF LABOR & ECONOMIC GROWTH
OFFICE OF FINANCIAL AND INSURANCE REGULATION
Before the Commissioner of Financial and Insurance Regulation

In the matter of

XXXXX

Petitioner

File No. 91124-001

v

Blue Cross Blue Shield of Michigan
Respondent

Issued and entered
this 14th day of October 2008
by Ken Ross
Commissioner

ORDER

I
PROCEDURAL BACKGROUND

On July 22, 2008 XXXXX, authorized representative of her son XXXXX ("Petitioner"), filed a request for external review with the Commissioner of the Office of Financial and Insurance Regulation under the Patient's Right to Independent Review Act, MCL 550.1901 *et seq.* The Commissioner reviewed the material submitted and accepted the request on July 29, 2008.

Because it involved medical issues, the Commissioner assigned the case to an independent review organization ("IRO") which provided its analysis and recommendations to the Commissioner on August 12, 2008. The provider, XXXXX, submitted additional information which was forwarded to the IRO on August 4, 2008. XXXXX also provided additional material that was not received by the Office of Financial and Insurance Regulation until August 13, after the seven day time limit for submitting material for consideration. Consequently, that material was not submitted to the IRO.

II FACTUAL BACKGROUND

The Petitioner receives health care benefits from Blue Cross Blue Shield of Michigan ("BCBSM") under its *Individual Care Blue* benefit certificate ("the certificate"). From February 13, 2007 through the present, the Petitioner has received neurobiofeedback treatment and physical therapy provided by XXXXX in XXXXX. BCBSM denied payment for this care.

The Petitioner appealed the denial through BCBSM's internal grievance process. After a managerial-level conference on May 6, 2008, BCBSM did not change its position and issued a final adverse determination on May 19, 2008.

III ISSUE

Did BCBSM properly deny coverage for the Petitioner's neurobiofeedback treatment and physical therapy?

IV ANALYSIS

Petitioner's Argument

The appeal in this case was filed by the Petitioner's mother who stated that the neurobiofeedback was being used to treat a traumatic brain injury her son had suffered. She says that the treatment has helped her son immensely. No information was submitted regarding Petitioner's physical therapy.

BCBSM's Argument

Under the terms of the certificate of coverage, BCBSM does not pay for experimental treatment or services related to experimental treatment. BCBSM's medical director reviewed the documentation and concluded that neurobiofeedback is an investigational treatment since it has not been proven to be clinically effective for treatment of the Petitioner's condition. Further, most mental health services under this certificate are only payable in an inpatient setting and must be provided by a physician or fully licensed psychologist with hospital privileges.

Regarding the physical therapy services Petitioner received, BCBSM says that the services were provided by a certified nurse practitioner. There was no indication that the treatment was prescribed, provided, or supervised by a physician as required by the certificate.

Commissioner's Review

The Petitioner's certificate sets forth the benefits that are covered. The sections of the certificate relevant to this appeal are reprinted below. In *Section 7: General Conditions of Your Contract* (page 7.2) the certificate of coverage states:

We do not pay for experimental or investigational treatment or for services that are related to experimental or investigational treatment.

Experimental or investigational is defined in the certificate (page 8.9) as:

A service that has not been scientifically proven to be as safe and effective for treatment of the patient's conditions as conventional or standard treatment.

The certificate's provision related to coverage for physical therapy (page 3.4) provides:

Physical therapy must be:

- Prescribed by a physician licensed to prescribe it and
- Given for a neuromuscular condition that can be significantly improved in a reasonable and generally predictable period of time (usually about six months) and
- Given by
 - An MD, DO, or DPM
 - A licensed physical therapist under the direction of a physician, or
 - Other individuals under the direct supervision of a licensed physical therapist, MD or DO

The medical issues in this case were presented to an IRO for analysis as required by the Patient's Right to Independent Review Act. The IRO reviewer is a physician in active practice certified by the American Board of Psychiatry and Neurology with a specialty in Neurology. The reviewer is a member of the American Academy of Neurology and is a former assistant professor at a university-based college of medicine.

The IRO reviewer indicated that neurobiofeedback is a treatment for functional disorders in which physiological measures, in this case quantitative electroencephalogram (EEG), are monitored

and transformed into simple information. The patient learns to control the physiology being measured. Not only is quantitative EEG a non-approved service, biofeedback to change EEG frequencies has never been proven to be clinically efficacious. Therefore, the IRO reviewer concluded that neurobiofeedback is investigational having not been proven to be effective.

The IRO reviewer noted that the limited medical records submitted for review do not state the Petitioner is receiving physical therapy. Even though the denial letter dated May 19, 2008 discussed coverage for physical therapy according to the certificate, there is no documented evidence in the medical record stating physical therapy has been ordered for this enrollee. The IRO concluded that physical therapy is not medically necessary for the Petitioner's condition.

The Commissioner is not required in all instances to accept the IRO's recommendation. However, the IRO recommendation is afforded deference by the Commissioner; in a decision to uphold or reverse an adverse determination the Commissioner must cite "the principal reason or reasons why the Commissioner did not follow the assigned independent review organization's recommendation," MCL 550.1911(16) (b). The IRO reviewer's analysis is based on extensive expertise and professional judgment and the Commissioner can discern no reason why the recommendation should be rejected in the present case.

The Commissioner accepts the conclusion of the IRO and finds that the Petitioner's neurobiofeedback treatment is investigational. The lack of documentation regarding the physical therapy means that its medical necessity cannot be determined. The Commissioner also notes that the physical therapy was provided by a certified nurse practitioner rather than an eligible provider as required by the certificate.

V ORDER

Respondent BCBSM's May 19, 2008, final adverse determination is upheld. BCBSM is not required to cover the Petitioner's neurobiofeedback treatment or physical therapy.

Under MCL 550.1915, any person aggrieved by this Order may seek judicial review no later

than sixty days from the date of this Order in the circuit court for the county where the covered person resides or the circuit court of Ingham County. A copy of the petition for judicial review should be sent to the Commissioner of the Office of Financial and Insurance Regulation, Health Plans Division, Post Office Box 30220, Lansing, MI 48909-7720.